

Iowa Broadband Deployment Governance Board

August 7, 2009

The third meeting of the Iowa Broadband Deployment Governance Board was held on Friday, August 7, 2009 at the offices of the Iowa Utilities Board, Conference Rooms three and four, 350 Maple Street, Des Moines, Iowa.

Board members present included, Ms. Patricia Anderson, Chair John Gillispie, Mr. Thomas Hart, Mr. Michael Haskins, Ms. Justine Heffron (via telephone), Ms. Carolyn King, Mr. Stephen Lacina, Dr.. Gary Norris, Mr. Edward Pardini, and Vice-Chair, Krista Tanner, Senator Kimberly Reynolds, Representative Kurt Swaim (via telephone), and Representative Matt Windschitl.

Staff present included, Mr. Joseph Cassis, ICN; Ms. Tamara Fujinaka, ICN; Mr. Adam Humes, IAG; Mr. John Ridgeway, IUB; Ms. Mary Whitman, IUB; Ms. Melanie Johnson, IDED and Ms. Vicky Winter-Clearman, IDED.

Members of the public present included, Mr. Tom Graves, Iowa Cable; Mr. Todd Schulz, Iowa Telecom and Mr. Tom Patterson; House Democratic Caucus staff.

Chair Gillispie called the meeting to order at 10:03 a.m. Members in attendance introduced themselves.

Approval of Minutes – July 30, 2009

Chair Gillispie noted Representative Swaim's name was incorrectly spelled in the two prior meeting's minutes. He said the correction would be made following the meeting.

Ms. Tanner moved approval of the July 30, 2009 meeting minutes with the correction to the spelling of Representative Swaim's name. Ms. Anderson seconded the motion. An oral vote was taken. The minutes passed by a unanimous vote.

Review and Reach Consensus on Draft Administrative Rules Section Changes

Chair Gillispie referred to Section 261.501.5, Threshold Application Requirements.

A general discussion followed regarding the requirements of the Federal application which would be required of applicants to the state program.

Mr. Pardini said the subcommittee was not prepared to make a recommendation as this topic was not discussed at the last subcommittee meeting. He stated the subcommittee will meet again on August 24, 2009.

Vice Chair Tanner spoke to the submission of the Federal application electronically. She said the document is 38 pages and would be unwieldy.

Mr. Pardini suggested shortening the state application and questioned whether the Board would have access to an applicant's Federal application, especially to the requirements of disclosure and points evaluation.

Vice Chair Tanner said the states will not have access to an applicant's Federal application. She stated the applicant would be the party to submit the application to the state.

Mr. Pardini suggested the requirement for the submission of the Federal application in addition to the state application.

Mr. Lacina inquired if the Federal application contained compromising or confidential information of the applicants.

Vice Chair Tanner stated proprietary and financial information is held as confidential.

Chair Gillispie said access to an applicant's financial information will be necessary to evaluate the economic stability of the project. He stated his view of this information is necessary in order to satisfy the legislature's charge.

Ms. Anderson inquired as to the definition of substantially completed.

Chair Gillispie said measurement criteria will be established that would include the number of customers to be served. He said the state program will depend heavily on the Federal application requirements. Chair Gillispie stated a substantial amount of information from the Federal application will be necessary in order to evaluate the state applications.

Vice Chair Tanner and Mr. Lacina stated their approval.

Vice Chair Tanner said there are confidentially protections for the applicants in the Open Records law.

Mr. Pardini suggested reviewing the Federal application without the inclusion of the technical sections of the application.

Chair Gillispie said the inclusion of the Federal application in redacted form would be permitted.

Mr. Pardini said the Board should not have access to an applicant's maps or designs.

Vice Chair Tanner noted this as a good point, as the members of the Board do include industry competitors.

Mr. Hart inquired if the Board would have the opportunity to review the Federal application comments.

Chair Gillispie said the NTIA reviews the applications in an initial round and then makes any clarifying questions of the applicant before scoring the application.

Mr. Hart inquired if there would be any awards made in the first round of funding.

Mr. Pardini said his estimation would be thirty-five percent for the first round.

Chair Gillispie said the RUS has a different process which includes submission of application, initial review and then clarification from the applicant.

Dr. Norris inquired as to the sensitivity of the information included in the Federal application and why this information would be considered confidential.

Chair Gillispie said at this point it is not clear what information will be released publically either through the NTIA or RUS.

Dr. Norris requested an example.

Chair Gillispie responded that network routing might possibly be considered confidential and an example of information an applicant would request to be held confidential as this might provide a competitor an unfair advantage.

Mr. Pardini responded with examples including speeds via DSL, distance from equipment, planned upgrades, and DOCSIS 3.0 deployment. He said if a competitor knew where an applicant's plans were they would be able to respond competitively.

Ms. King said she encouraged the applicant to file a notice of intent, but inquired what information the notice of intent would request. She suggested a "taste" of the project without revealing any information considered confidential.

Chair Gillispie said the applicant's financial information would be the most sensitive information, as the Board is required to address the economic sustainability requirement.

Mr. Humes stated there are exceptions to the open records law, on specific grounds which offer some protections for portions of the Federal application.

Mr. Lacina inquired if this was related to a national security concern.

Vice Chair Tanner said the federal program does not have this information or require it from applicants. She stated the concern has previously been raised. Vice Chair Tanner said business plans and financial records would be considered confidential information.

Chair Gillispie suggested the Board seek legislative relief for the confidentiality provisions. He said this could be an early cleanup bill to be addressed during the next legislative session.

Vice Chair Tanner said the state application should not be duplicative of the Federal application.

Mr. Humes suggested an applicant could request confidential treatment of their application.

Chair Gillispie stated in his experience a custodian of records is a separate entity than the owner of the records. He said an owner of data/applicant could seek injunctive relief to stop the release of information considered confidential.

Mr. Hart said his concerns are for the information held by the Board. He stated his opinion would be to access as much information from the Federal application as possible, however, do not require this information if it will cause disclosure concerns for an applicant in the future.

Vice Chair Tanner said this issue is definitely for the attorneys to address and work out a solution. She suggested borrowing the Federal definition so as to not be inconsistent in reference to substantially complete application.

Mr. Lacina inquired as to Iowa Code sections 22.84 and 22.10(4) and said he would like copies for the members of the Board to review.

Chair Gillispie said this issue requires more research and advice of counsel.

Chair Gillispie reviewed fully funded projects.

Mr. Pardini suggested the capital projects be evaluated with generally accepted accounting principles consistent with GAP.

A question arose as to the bond requirements and depreciated expenses, capitalized labor costs and interest costs.

A general discussion followed regarding economic sustainability. After a review of several different perspectives no conclusion or consensus was reached.

Mr. Pardini suggested the issue for discussion in the subcommittee meeting.

Vice Chair Tanner said she hesitated adding another issue to the subcommittee's agenda.

Vice Chair Gillispie requested public comments on economic sustainability.

Mr. Patterson, with the House Democratic Caucus Staff, said several of the confidentiality exceptions are specifically because of the applicant requirements of the Department of Economic Development. He stated in his opinion the Department are experts in some of the issues the Board has encountered.

Chair Gillispie addressed the additional state or Federal funding disclosure.

Mr. Pardini inquired as to the project timeline, and whether the project timeline is directly impacted by the life of the bonds, for example twenty to twenty-five years in duration.

A general discussion followed regarding the possibility of applicant upgrades with the consensus of the Board being that language to bar upgrades does not exist; however, funding cannot be requested from the State for those upgrades.

Vice Chair Tanner stated the Federal NOFA is unclear on the issue.

Representative Swaim stated the statute is well worded, “no further government assistance”.

Mr. Humes said the language in the statute in reference to sustainability offers a mechanism to kick an application out of consideration for funding.

Chair Gillispie said the project must be economically sustainable.

Mr. Hart illustrated the example where an application might generate a high points value, but still not meet the economically sustainable criteria.

Chair Gillispie suggested the group define the economic sustainability of a projects.

Mr. Pardini said the subcommittee continues work on the program application.

Vice Chair Tanner suggested the subcommittee and application review process could also be assisted with staff of the Iowa Utilities Board, the Iowa Department of Economic Development and the Iowa Communications Network.

Mr. Hart stated his concern with industry members’ sensitivity to reviewing potential competitors’ applications.

Vice Chair Tanner said all board members need to be comfortable in voting on the information contained in assessing the application. She said this is necessary in order to make a fully informed decision.

Mr. Lacina suggested with the potential mountains of paper generated with the applications, an initial review by agency staff with an executive summary.

Dr. Norris suggested a sufficient number of staff would be required, in order to exclude the possibility an individual staff members may be influenced in reviewing specific applications.

Chair Gillispie suggested this proposal could be utilized to address the workload in reviewing the applications.

Ms. Johnson said Mr. Charlie Smithson of the Iowa Ethics and Campaign Advisory Board will address the Board on conflict issues at the September 11, 2009 meeting.

Vice Chair Tanner suggested many of the Board members from state agencies and private industries may have additional resources and staff whereas the public Board members may not have access to additional staff and resources.

Mr. Hart said the liked the concept of a consistent group of individuals reviewing the applications.

Dr. Norris moved the approval of a seven member application review committee, consisting of five staff and two Board members to review and score the applications submitted to the Board with the application scores available to all Board members. Mr. Hart seconded the motion. A roll call vote was taken with the following results: Yes: Gillispie, Hart, Heffron, King, Lacina and Norris. No: Haskins, Pardini and Tanner. Abstain: None. Absent: White. The motion passed on a vote of six yes and three no votes.

Mr. Pardini stated he was uncomfortable with several aspects of the proposal, specifically the application scoring criteria and points range. He used an example of an attorney reviewing and scoring an application on technical criteria or a technical individual scoring an application which would serve vulnerable populations. Mr. Pardini stated he would like to see the evaluations of the applications with final scores.

Senator Reynolds suggested removing the scoring from the application review process.

Ms. Johnson stated as an attorney she would serve the Board and Department of Economic Development in an advisory capacity only, and would not score or review applications.

Chair Gillispie reminded the members of the Board as to the magnitude of the applications.

Dr. Norris said this should be a thoughtful process and include a hold harmless clause for those members of the Board participating in the review process with technical expertise.

Mr. Lacina inquired as to the existence of an application appeals process.

Chair Gillispie said no allowances were made for an application appeals process.

Ms. Johnson referred to Iowa Code Chapter 17A.

Vice Chair Tanner suggested an applicant could refile their application or amend their application.

Chair Gillispie stated an applicant always has the right to reapply to the program.

Ms. Johnson spoke briefly on several scenarios involving contracts and grants and the distribution of funds. She said the applicant under a standard contract submits expenses and is reimbursed as the expenditures are submitted. Ms. Johnson stated another scenario is the

establishment of benchmarks or percentage of project completion and the disbursement of funds dependent on those time frames.

Mr. Lacina said he preferred the establishment of project benchmarks for the disbursement of program funds.

Chair Gillispie said a percentage of the award based upon project increments would be wise as all the program funds would not be disbursed at one time in the event of project failure.

Vice Chair Tanner stated the NTIA uses increments for disbursement of funds.

Ms. Johnson inquired as to the bonding boundaries.

Chair Gillispie said his preference would be to mirror the NTIA or mirror the state's capital release program.

Ms. Johnson inquired as to the contract deadlines, suggesting a time frame of 120 days for return of the contract from an applicant.

Chair Gillispie said his preference would be a time frame of thirty to sixty days provided there are no contract negotiations.

A discussion regarding reporting requirements followed with the preference to mirror the Federal program as much as possible.

Chair Gillispie said much of the Board's work will be completed by FY 2011.

Mr. Humes will work with Chair Gillispie regarding the reporting requirements of the Legislature and the state agencies involved with the Board.

Chair Gillispie discussed the notice of intent to apply referencing the back page and the data requested from the applicant. Chair Gillispie said the information will be entered into the Grants Management System (GMS).

Ms. King motioned approval of the Notice of Intent to Apply. Dr. Norris seconded the motion.

Vice Chair Tanner inquired as to the detailed budget information requested. She said this would provide an idea of the applications and inquired whether the Notice of Intent to Apply should include the total project costs and amount of state funds requested.

Mr. Hart stated he liked the idea of including the total project cost, and state and federal funding.

Dr. Norris moved to amend the previous motion to include total project cost in addition to federal and state funding. Ms. King seconded the motion. An oral vote was taken. The motion was approved unanimously by the Board members present.

Mr. Pardini reported on the subcommittee meeting. He said the subcommittee met for two hours.

Mr. Pardini referred to the draft document which contains the proposed criteria for viability and sustainability. He said the subcommittee will meet again on August 24, 2009. Mr. Pardini said the project purpose with program criteria, broadband speeds and Federal standards, rural populations, technical standards, bonus points and additional criteria were discussed.

Mr. Haskins said his understanding is the speed numbers were not yet determined.

Mr. Pardini said the upstream broadband speeds and underserved vs. unserved populations criteria will be further discussed at the August 26, 2009 meeting.

Mr. Hart moved approval of the application. Ms. King seconded the motion.

Mr. Hart amended his motion to remove the recommendation for broadband speeds. Ms. King seconded the motion. An oral vote was taken. The motion was approved unanimously by the Board members present.

Chair Gillispie proposed an interim meeting before the September 11, 2009 meeting to further discuss the ongoing work of the application subcommittee. He suggested August 28, 2009 from 10:00 a.m to Noon at the offices of the Iowa Utilities Board. Chair Gillispie said Vice Chair Tanner will serve as Chair for this meeting in his absence.

Vice Chair Tanner reported the State issued a request for proposal for a mapping entity. She said the successful bidder, Connected Nation, was selected for their experience in planning and sustainable broadband adoption experience.

The August 7, 2009 meeting of the Broadband Governance Deployment Board was adjourned unanimously at 12:21 p.m.